

**STATE OF RHODE ISLAND  
ENERGY FACILITY SITING BOARD**

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**IN RE: REVOLUTION WIND, LLC  
APPLICATION TO CONSTRUCT A  
MAJOR ENERGY FACILITY**

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) Docket No. SB-2021-01  
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**MOTION OF REVOLUTION WIND, LLC FOR PROTECTIVE TREATMENT OF  
CONFIDENTIAL INFORMATION**

Revolution Wind, LLC (“Revolution Wind”) hereby requests that the Energy Facility Siting Board (the “Board”) grant protection from public disclosure to certain confidential information submitted by Revolution Wind in response to the Energy Facility Siting Board’s Record Requests (“EFSB RR”). Specifically, Revolution Wind seeks an order from the Board to protect certain confidential information regarding historically and culturally sensitive sites that is protected from disclosure under federal law, which Revolution Wind submitted as part of Attachment EFSB RR1-1 to Revolution Wind’s response to EFSB RR1 and in Revolution Wind’s response to EFSB RR11. Revolution Wind requests protective treatment of this information, and seeks a determination that this information is not a public record, in accordance with R.I. Gen. Laws § 38-2-2(4)(S). Revolution Wind also hereby requests that, pending entry of that ruling, the Board preliminarily grant Revolution Wind’s request for confidential treatment.

**I. BACKGROUND**

On December 30, 2020, Revolution Wind filed its Application to Construct a Major Energy Facility with the EFSB. The Application was docketed on January 22, 2021. After public notice, the EFSB held a preliminary hearing on March 22, 2021. The purpose of the preliminary hearing was “to determine the issues to be considered by the EFSB in evaluating the application,

and to designate those agencies of state government and of political subdivisions of the state which shall act at the direction of the EFSB for the purpose of rendering advisory opinions on these issues, and to determine petitions for intervention.” Following the Preliminary Hearing, the EFSB issued a Preliminary Decision and Order dated April 26, 2021 (the “Preliminary Decision”), directing nine state and local agencies to submit advisory opinions by August 26, 2021, which they did.

The EFSB held a public hearing on October 12, 2021. During the hearing, the EFSB issued twelve Record Requests to Revolution Wind. In response to EFSB RR1, Revolution Wind submitted a site map that includes the location of culturally sensitive resources. In response to EFSB RR11, Revolution Wind described the nature of these culturally sensitive resources. This motion seeks confidential treatment and protection from public disclosure of the version of Attachment Revolution Wind EFSB RR1-1 identifying the location of the culturally sensitive resources<sup>1</sup> and the entirety of its response to RR11.

## **II. LEGAL STANDARD**

The Access to Public Records Act, R.I. Gen. Laws § 38-2-1 *et seq.* (“APRA”), establishes the proper balance between “public access to public records” and protection “from disclosure [of] information about particular individuals maintained in the files of public bodies when disclosure would constitute an unwarranted invasion of personal privacy.” Gen. Laws § 38-2-1. Per APRA, “all records maintained or kept on file by any public body” are “public records” to which the public has a right of inspection unless a statutory exception applies. *Id.* § 38-2-3.

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<sup>1</sup> Revolution Wind prepared a corresponding version of Attachment Revolution Wind EFSB RR1-1 that omits the location of these resources.

The definition of “public record” under APRA specifically excludes “[r]ecords, reports, opinions, information, and statements required to be kept confidential by federal law or regulation or state law or rule of court.” *Id.* § 38-2-2(4)(S). The statute provides that such records “shall not be deemed public.” *Id.* Further, the Rhode Island Supreme Court has held that when documents fall within a specific APRA exemption, they “are not considered to be public records,” and “the act does not apply to them.” *Providence Journal Co. v. Kane*, 577 A.2d 661, 663 (R.I. 1990).

### **III. BASIS FOR CONFIDENTIALITY**

By this Motion, Revolution Wind seeks confidential treatment for the version of Attachment Revolution Wind EFSB RR1-1 that contains the location of culturally sensitive resources and for its response to EFSB RR11. Section 304 of the National Historic Preservation Act, 54 U.S.C. § 300101 *et seq.*, (“NHPA”) establishes a set of rules for federal officials and state historic preservation officers to withhold information that would put significant cultural sites at risk of damage, privacy violations, or interference with the traditional cultural or religious practices associated with those specific places. *See* 36 C.F.R. § 800.1(c) (providing that “the head of a Federal agency . . . shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners”). Attachment Revolution Wind EFSB RR1-1 and the response to EFSB RR11 contain this type of information. The confidential locations and language in these documents therefore constitutes information “required to be kept confidential by federal law or regulation” to which the APRA public disclosure requirements do not apply. *See* Gen. Laws § 38-2-2(4)(B); *Kane*, 577 A.2d at 663.

Pursuant to the NHPA, Revolution Wind treats the redacted information in Attachment Revolution Wind EFSB RR1-1 and the response to RR11 as confidential. Revolution Wind does not generally make it available to the public, other companies, or regulatory bodies in the absence of a protective order or confidentiality agreement. Disclosing this culturally and historically sensitive information publicly as part of the Board's Application review process would impede Revolution Wind's ability to comply with federal law. *See* Gen. Laws § 38-2-2.

The redacted information contained in Attachment Revolution Wind EFSB RR1-1 and Revolution Wind's response to EFSB RR11 constitutes information "required to be kept confidential by federal law or regulation" to which the APRA public disclosure requirements do not apply. *See* Gen. Laws § 38-2-2(4)(S). Revolution Wind has provided a narrowly redacted public version of Attachment Revolution Wind EFSB RR1-1 to balance the public's interest in access to information with NHPA's requirements. Revolution Wind therefore respectfully requests that the Board grant protective treatment to the redacted portions of Attachment Revolution Wind EFSB RR1-1 and the entirety of the response to RR11 and take the following actions to preserve its confidentiality: (1) maintain the unredacted versions of EFSB RR1-1 and the response to RR11 as confidential indefinitely; (2) not place any unredacted version of EFSB RR1-1 or RR11 on the public docket; and (3) disclose an unredacted version of EFSB RR1-1 and RR11 only to the Board, its attorneys, and staff as necessary to review Revolution Wind's application.

**WHEREFORE**, Revolution Wind respectfully requests that the Board grant its Motion for Protective Treatment.

Date: October 22, 2021

Respectfully submitted,

Revolution Wind, LLC,  
By its attorneys,



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Robin L. Main (#4222)  
Adam Ramos (#7591)  
Christine Dieter (#9859)  
Hinckley Allen & Snyder  
100 Westminster Street, Suite 1500  
Providence, RI 02903-2319  
(401) 457-5278  
(401) 277-9600 (fax)  
rmain@hinckleyallen.com  
aramos@hinckleyallen.com  
cdieter@hinckleyallen.com

## CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2021, I sent a copy of the foregoing to the service list by electronic mail.

/s/ Adam M. Ramos

**SB-2021-01 Revolution Wind, LLC Application for Major Energy Facility**  
**Updated October 19, 2021** (by HA&S)

<b>Name/Address</b>	<b>E-mail</b>
Chairman Ronald Gerwatowski (PUC)	<a href="mailto:Ronald.Gerwatowski@puc.ri.gov">Ronald.Gerwatowski@puc.ri.gov</a> ;
Acting Director Terry Gray (DEM)	<a href="mailto:Terry.gray@dem.ri.gov">Terry.gray@dem.ri.gov</a> ;
Associate Director Meredith Brady (DOA)	<a href="mailto:Meredith.brady@doa.ri.gov">Meredith.brady@doa.ri.gov</a> ;
Emma Rodvien (PUC)	<a href="mailto:Emma.Rodvien@puc.ri.gov">Emma.Rodvien@puc.ri.gov</a> ;
Patricia Lucarelli (PUC)	<a href="mailto:Patricia.lucarelli@puc.ri.gov">Patricia.lucarelli@puc.ri.gov</a> ;
Suzanne Amerault (DEM)	<a href="mailto:Suzanne.Amerault@dem.ri.gov">Suzanne.Amerault@dem.ri.gov</a> ;
Maria Mignanelli (DOA)	<a href="mailto:maria.mignanelli@doa.ri.gov">maria.mignanelli@doa.ri.gov</a> ;
Adam Ramos (Hinckley, Allen, & Snyder, LLP)	<a href="mailto:aramos@hinckleyallen.com">aramos@hinckleyallen.com</a> ;
Robin Main (Hinckley, Allen, & Snyder, LLP)	<a href="mailto:rmain@hinckleyallen.com">rmain@hinckleyallen.com</a> ;
Christine Dieter (Hinckley, Allen, & Snyder, LLP)	<a href="mailto:cdieter@hinckleyallen.com">cdieter@hinckleyallen.com</a> ;
Marvin Bellis (Eversource)	<a href="mailto:marvin.bellis@eversource.com">marvin.bellis@eversource.com</a> ;
Charles R. Scott	<a href="mailto:chsco@orsted.com">chsco@orsted.com</a> ;
Jeannette Alyward	<a href="mailto:jalyward@northkingstown.org">jalyward@northkingstown.org</a> ;
Town of North Kingstown Town Council	<a href="mailto:TownCouncil@northkingstown.org">TownCouncil@northkingstown.org</a> ;
Matt Callaghan	<a href="mailto:matt@callaghanlawri.com">matt@callaghanlawri.com</a> ;
George Watson (Robinson Cole)	<a href="mailto:Gwatson@rc.com">Gwatson@rc.com</a> ;
Mark Rielly (National Grid)	<a href="mailto:Mark.rielly@nationalgrid.com">Mark.rielly@nationalgrid.com</a> ;
Rachel Thomas (National Grid)	<a href="mailto:Rachel.Thomas@nationalgrid.com">Rachel.Thomas@nationalgrid.com</a> ;
Commissioner Nicholas Ucci (OER)	<a href="mailto:Nicholas.Ucci@energy.ri.gov">Nicholas.Ucci@energy.ri.gov</a> ;
Christopher Kearns (OER)	<a href="mailto:Christopher.Kearns@energy.ri.gov">Christopher.Kearns@energy.ri.gov</a> ;
Carrie Gill (OER)	<a href="mailto:Carrie.Gill@energy.ri.gov">Carrie.Gill@energy.ri.gov</a> ;
Becca Trietch (OER)	<a href="mailto:Becca.Trietch@energy.ri.gov">Becca.Trietch@energy.ri.gov</a> ;
Todd Bianco (PUC)	<a href="mailto:Todd.Bianco@puc.ri.gov">Todd.Bianco@puc.ri.gov</a> ;

Cindy Wilson-Frias (PUC)	<a href="mailto:Cynthia.Wilsonfrias@puc.ri.gov">Cynthia.Wilsonfrias@puc.ri.gov</a> ;
Alan Nault (PUC)	<a href="mailto:Alan.nault@puc.ri.gov">Alan.nault@puc.ri.gov</a> ;
Luly Massaro (PUC)	<a href="mailto:Luly.Massaro@puc.ri.gov">Luly.Massaro@puc.ri.gov</a> ;
Christy Hetherington (DPUC)	<a href="mailto:Christy.hetherington@dpuc.ri.gov">Christy.hetherington@dpuc.ri.gov</a> ;
John Bell (DPUC)	<a href="mailto:John.bell@dpuc.ri.gov">John.bell@dpuc.ri.gov</a> ;
Thomas Kogut (DPUC)	<a href="mailto:thomas.kogut@dpuc.ri.gov">thomas.kogut@dpuc.ri.gov</a> ;
Maggie Hogan (DPUC)	<a href="mailto:Margaret.l.hogan@dpuc.ri.gov">Margaret.l.hogan@dpuc.ri.gov</a> ;
Matthew Ouellette (DOT)	<a href="mailto:Matthew.Ouellette@dot.ri.gov">Matthew.Ouellette@dot.ri.gov</a> ;
Robert Rocchio (DOT)	<a href="mailto:Robert.Rocchio@dot.ri.gov">Robert.Rocchio@dot.ri.gov</a> ;
Joseph Bucci (DOT)	<a href="mailto:Joseph.Bucci@dot.ri.gov">Joseph.Bucci@dot.ri.gov</a> ;
Jill Nascimento (DOT)	<a href="mailto:Jill.Nascimento@dot.ri.gov">Jill.Nascimento@dot.ri.gov</a> ;
<del>John Paul Loether (HPHC)</del>	<del><a href="mailto:johnpaul.loether@preservation.ri.gov">johnpaul.loether@preservation.ri.gov</a></del> ;
Jeffrey Emidy (HPHC)	<a href="mailto:jeffrey.emidy@preservation.ri.gov">jeffrey.emidy@preservation.ri.gov</a> ;
Charlotte Taylor (HPHC)	<a href="mailto:Charlotte.Taylor@preservation.ri.gov">Charlotte.Taylor@preservation.ri.gov</a> ;
Nicole Lafontaine (North Kingstown Planning Board)	<a href="mailto:NLaFontaine@northkingstown.org">NLaFontaine@northkingstown.org</a> ;
Roberta Groch (DOA)	<a href="mailto:Roberta.Groch@doa.ri.gov">Roberta.Groch@doa.ri.gov</a> ;
<del>Kevin Nelson (DOA)</del>	<del><a href="mailto:Kevin.Nelson@doa.ri.gov">Kevin.Nelson@doa.ri.gov</a></del> ;
Jennifer Sternick (DOA)	<a href="mailto:Jennifer.Sternick@doa.ri.gov">Jennifer.Sternick@doa.ri.gov</a> ;
Nancy Lavin (Providence Business News)	<a href="mailto:Lavin@pbn.com">Lavin@pbn.com</a> ;
Christian Capizzo (Partridge Snow & Hahn LLP)	<a href="mailto:ccapizzo@psh.com">ccapizzo@psh.com</a> ;
Peter Shattuck (Anbaric)	<a href="mailto:pshattuck@anbaric.com">pshattuck@anbaric.com</a>
Nicole DiPaolo (National Wildlife Foundation)	<a href="mailto:DiPaoloN@nwf.org">DiPaoloN@nwf.org</a> ;
Christina Hoefsmit (DEM)	<a href="mailto:Christina.Hoefsmit@dem.ri.gov">Christina.Hoefsmit@dem.ri.gov</a> ;